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IN THE

Supreme Court of the United States

VICKY S. CRAWFORD,
Petitioner,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER ET AL. AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the anti-retaliation provision of section 704(a) of Title VII of the 1964 Civil Rights Act protect a worker from being dismissed because she cooperated with her employer's internal investigation of sexual harassment?

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OTHER AUTHORITIES

American Bar Association, Commission on Women in the Profession, *Sex-Based Harassment: Workplace Policies for the Legal Profession* (2d ed. 2007).....20
Theresa M. Beiner, *Gender Myths v. Working Realities: Using Social Science to Reformulate Sexual Harassment Law* (New York University Press 2005).....14
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Elizabeth H. Dodd et al., *Respected or Rejected: Perceptions of Women Who Confront Sexist Remarks*, 45 Sex Roles 567 (2001).....16

Equal Employment Opportunity Commission, http://www.eeoc.gov/stats/enforcement.html.....14

Louise F. Fitzgerald, Suzanne Swan & Karla Fischer, *Why Didn't She Just Report Him?: The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 J. Soc. Issues 117 (1995).....10, 11, 12, 13, 18

Barbara A. Gutek & Mary P. Koss, *Changed Women and Changed Organizations: Consequences of and Coping with Sexual Harassment*, 42 J. Vocational Behav. 28 (1993).....5, 9, 11, 18

Cheryl R. Kaiser & Brenda Major, *A Social Psychological Perspective on Perceiving and Reporting Discrimination*, 31 L. & Soc. Inquiry 801 (2006).....14

Cheryl R. Kaiser & Carol T. Miller, *Stop Complaining! The Social Costs of Making Attributions of Discrimination*, 27 Personality & Soc. Psychol. Bull. 254 (2001).....12, 15

Deborah E. Knapp, et al., *Determinants of Target Responses to Sexual Harassment: A Conceptual Framework*, 22 Acad. Mgmt. Rev. 687 (1997).....12, 18

Vicki J. Magley, *Coping with Sexual Harassment: Reconceptualizing Women's Resistance*, 83 J. Personality and Soc. Psychol. 930 (2002).....11
Anna-Maria Marshall, *Consciousness in Context: Employees' Views of Sexual Harassment Grievance Procedures, in* Benjamin Fleury-Steiner & Laura Beth Nielsen, The New Civil Rights Research: A Constitutive Approach 110-118 (2006).....22
R.J. Paul & J.B. Townsend, *Don't Kill the Messenger? Whistleblowing in America—A Review and Recommendation*, 9 Emp. Resp. & Rts. J. 149 (1996).....19
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Karen M. Ruggiero & Donald M. Taylor, *Why Minority Group Members Perceive or Do Not Perceive the Discrimination that Confronts Them: The Role of Self-Esteem and Perceived Control*, 72 J. Personality & Soc. Psychol. 373, 386 (1997).....16

Kimberly T. Schneider, Suzanne Swan & Louise F. Fitzgerald, *Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence from Two Organizations*, 82 J. Applied Psychol. 401 (1997).....8, 10

J. Nicole Shelton & Rebecca E. Stewart, *Confronting Perpetrators of Prejudice: The Inhibitory Effects of Social Costs*, 28 Psychol. Women Q. 215 (2004).....15

U.S. Merit Systems Protection Board, *Sexual Harassment of Federal Workers: Is it a Problem?* (U.S. Government Printing Office 1981).....9, 14

U.S. Merit Systems Protection Board, *Sexual Harassment of Federal Workers: An Update* (U.S. Government Printing Office 1987).....9, 13

Chelsea R. Willness, Piers Steel & Kibeom Lee, *A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment*, 60 Personnel Psychol. 127 (2007).....7, 8, 19

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INTEREST OF THE AMICI CURIAE

The National Women's Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights. Since 1972, NWLC has worked to secure equal opportunity for women in the workplace, which includes the right to a workplace that is free from sexual harassment and to protection from retaliation. NWLC has prepared or participated in the preparation of numerous amicus briefs in cases involving sex discrimination in employment before this Court.[1] It is joined in filing this brief by 31 organizations that share a longstanding commitment to civil rights and equality in the workplace for all Americans. The individual organizations are described in the attached appendix.

STATEMENT OF FACTS

Vicky Crawford was fired after a successful thirty-year career with the Metropolitan Government of Nashville and Davidson County, Tennessee (collectively referred to here as "Metro") within months of giving evidence about sexual harassment by a senior manager in an employer-initiated investigation of his conduct.

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Early in 2002, an attorney at the Metro Legal Department learned that several female employees had expressed concern about being sexually harassed by Dr. Gene Hughes, the employee relations director for the Metro School District. Dr. Hughes was one of the highest ranking officials in the school district, and had been personally selected by the Director of the School District. Responsibility for investigating the allegations went to Veronica Frazier, the assistant director for the county human resources department.

Ms. Frazier started her investigation by calling to her office those employees who had worked directly with Dr. Hughes. In the course of Ms. Frazier's interviews with these employees, three women, including Vicky Crawford, described serious incidents of sexual harassment by the employee relations director. Ms. Crawford's statements to the investigator described Dr. Hughes' "numerous" requests to see her breasts; detailed how, in response to a friendly "what's up?" from her, he grabbed his crotch and said "you know what's up"; explained that on several occasions he pressed his crotch against the window of her office; and revealed that on one occasion, when he had come in to her office and she asked what she could do for him, he grabbed her head and pulled it toward his lap. Pet. App. 5A n.1. JA 12, 16-19, 23.

The investigator's report left the allegations of sexual harassment made by Ms. Crawford and the other two women who participated in the investigation unresolved. Because Dr. Hughes denied all of the allegations of harassment, and there were no witnesses to the incidents, the report repeatedly noted

that "[f]act finders could not confirm the complainant's statements. . . . and there are no witnesses to corroborate the witness' claim." Br. Opp. App. 15-16. While the report concluded that Dr. Hughes had acted inappropriately to some extent, no disciplinary action of any sort was taken against him.

Instead, the disciplinary action that was taken was the dismissal of all three witnesses who had offered evidence of sexual harassment. During the investigation, Ms. Crawford expressed her fear that because Dr. Hughes was in a position of authority and was a good friend of the Director of the School District, she was going to lose her job for providing information about his misconduct. Indeed, the reason she had not herself reported the harassment earlier was because Dr. Hughes was the head of employee relations, which was where an employee would normally report any such charge. JA 20. Ms. Crawford's fears were warranted. Within a month of the investigator's report being finalized, Ms. Crawford herself was placed under investigation by her employer. She was fired, on charges that she alleged to be false, just months after she participated in Metro's investigation of Dr. Hughes. Pet. App. 5a.

Ms. Crawford sued her former employer, charging that firing her within months of her participation in its investigation of the employee relations director's alleged sexual harassment constituted illegal retaliation under Title VII of the Civil Rights Act of 1964.[2] The Sixth Circuit,

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[2] Section 704(a) of Title VII protects an employee from retaliation because "he has opposed any practice made an unlawful employment practice by this title, or because he has

affirming a grant of summary judgment, concluded that Ms. Crawford's statements about the sexually inappropriate conduct engaged in by the employee relations director did not constitute "opposition" to illegal conduct that is protected by Title VII. The court also found that Ms. Crawford had no protection against retaliation for "participation" in her employer's internal investigation because the investigation occurred before any charge of discrimination had been filed with the Equal Employment Opportunity Commission (EEOC).

SUMMARY OF ARGUMENT

To be effective, Title VII's prohibition against retaliation must protect employees like Vicky Crawford who participate in their employers' internal investigations of sexual harassment and other discrimination. This protection—under both the "participation" and the "opposition" clauses of the statute's anti-retaliation provision—is of particular importance in the context of sexual harassment. Social science research reveals that sexual harassment is underreported as a result of the fear of retaliation, and that the costs of harassment to its victims and to the organizations that employ them are exacerbated by the consequences of underreporting.

Sexual harassment is an insidious, pervasive and still widespread problem that interferes with women's right to participate fully in working life.

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made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title." 42 U.S.C. § 2000e-3.

The effects of sexual harassment on women's work are significant. Numerous studies have shown that as many as 1 in 10 women may leave a job as a result of sexual harassment. *See* Barbara A. Gutek & Mary P. Koss, *Changed Women and Changed Organizations: Consequences of and Coping with Sexual Harassment*, 42 J. Vocational Behavior 28, 31-32 (1993) (hereinafter "*Changed Women and Changed Organizations*"). Sexual harassment lowers women's self-confidence and erodes their commitment to the organizations in which they work. Moreover, the intense negative impact of harassment on women's physical and mental health goes far beyond the workplace.

Social science research has extensively documented these negative effects and has also revealed that women face tremendous pressure not to report workplace harassment. The fear of retaliation for reporting, substantiated by the reality that employers often do retaliate, is the largest source of pressure not to report harassment either internally or externally. Moreover, the research also demonstrates that women are more likely to report sexually inappropriate behavior or to take other overt steps to challenge the behavior in an environment that tolerates neither the harassment itself nor retaliation for its reporting. Without reporting, the chances of ending the widespread harm of harassment are minimal. As this Court recently observed, "Title VII depends for its enforcement upon the cooperation of employees who are willing to file complaints and act as witnesses." *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 , 2414 (2006). The Sixth Circuit's decision

sends a clear and troubling message to all sexual harassment victims that their fear of retaliation is warranted, and thereby discourages reporting of misconduct. Under the rule established by the lower court's decision, sexual harassment will continue and women will continue to suffer the consequences.

When this Court established the affirmative defense for hostile work environment harassment in *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. Boca Raton*, 524 U.S. 775 (1998), it emphasized the significance of the law's role in preventing and eradicating discrimination, not simply in providing an avenue for litigation once the discrimination has occurred. The affirmative defense emphasized the employer's responsibility to act to deter harassment as well as the employee's responsibility to take advantage of internal employer mechanisms for addressing harassment. The Sixth Circuit's rule, by providing no protection against retaliation for employees who participate in their employers' internal processes and who thus oppose sexual harassment in the workplace, undermines any effective mechanism for internal resolution of harassment.

The decision below should be reversed, both because the plain language of Title VII protects Ms. Crawford's conduct, *see* Brief for Petitioner and the other *amicus* briefs filed in this case, and because, as discussed herein, the Sixth Circuit's holding completely undermines the purpose of the anti-retaliation provisions. This Court should definitively establish that petitioner's conduct is protected under the anti-retaliation provision of Title VII both

because she participated in an investigation and because she opposed an unlawful employment practice.

ARGUMENT

I. Sexual Harassment is Pervasive and Costly

Sexual harassment is "one of the most damaging barriers to career success and satisfaction for women." Chelsea R. Willness et al, *A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment*, 60 Personnel Psychology 127, 127 (2007) (hereinafter "*The Antecedents and Consequences of Workplace Harassment*"). While estimates of the pervasiveness of harassment vary, most suggest that more than half of women in the United States face some form of workplace sexual harassment. *Id.* at 128.[3]

Women targeted by harassment pay a significant price psychologically, physically, and economically. That "price comes in many forms, from job loss and lowered productivity, to health effects such as sleeplessness, anxiety, depression and lowered satisfaction with one's job and one's life." Beth A. Quinn, *The Paradox of Complaining: Law, Humor and Harassment in the Everyday Work World*, 25 Law & Soc. Inquiry 1151, 1154 (2000) (hereinafter

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[3] While this brief focuses on sexual harassment, the harm done by race, age and other forms of discrimination and harassment is also enormous. Moreover, similar fears of retaliation and social pressure not to identify experiences as discrimination lead to underreporting across the spectrum of discriminatory conduct.

"*The Paradox of Complaining*"). *See also* Caroline Vaile Wright & Louise F. Fitzgerald, *Angry and Afraid: Women's Appraisal of Sexual Harassment During Litigation*, 31 Psychol. Women Q. 73, 73 (2007) (hereinafter "*Angry and Afraid*"). Studies have shown that harassment, "even at relatively low frequencies, exerts a significant negative impact on women's psychological well-being and, particularly, job attitudes and work behaviors." Kimberly Schneider et al., *Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence from Two Organizations*, 82 J. Applied Psychol. 401, 412 (1997) (hereinafter "*Job-Related and Psychological Effects of Sexual Harassment*"). In fact, even women who do not identify the sexually explicit conduct they confront at work as "harassment" report negative psychological effects as a result of the conduct. *Id.* at 413.

Sexual harassment decreases job satisfaction and commitment to the organization. It reduces morale and productivity, interferes with interpersonal workplace relationships, and increases absenteeism and other forms of escape from the workplace. *The Antecedents and Consequences of Workplace Harassment*, at 145-49. Sexual harassment thus not only harms employees, but also creates substantial costs for employers. Indeed, studies of employer costs suggest that companies have lost hundreds of millions of dollars in loss of productivity—both individual and group—and in absenteeism and retraining. Organizations further face litigation expenses, bad publicity, and negative effects on recruiting and retention in the wake of harassment. *The Antecedents and Consequences of Workplace*

Sexual Harassment, at 127. Some studies report that as many as one in 10 women will leave a job because of sexual harassment. *See Changed Women and Changed Organizations*, at 31-32.

More subtle costs are at least as significant. A widely cited set of studies done by the U.S. Merit Systems Protection Board found that thousands of female federal employees had experienced negative emotional and physical symptoms as a result of sexual harassment. U.S. Merit Systems Protection Board, *Sexual Harassment of Federal Workers: Is it a Problem?*, Washington D.C., U.S. Government Printing Office (1981) (hereinafter "*Sexual Harassment of Federal Workers*"); U.S. Merit Systems Protection Board, *Sexual Harassment of Federal Workers: An Update*, Washington D.C., U.S. Government Printing Office (1987) (hereinafter "*Sexual Harassment of Federal Workers: An Update*"). Other studies have found a wide range of psychological injury to victims of sexual harassment, with some finding harm so significant that victims showed symptoms of Post-Traumatic Stress Disorder (PTSD). *The Antecedents and Consequences of Workplace Sexual Harassment*, at 149 (reviewing several studies).

II. Sexual Harassment is Significantly Underreported

Despite the harmful impact harassment has on so many women, research shows that "most harassment targets do not report their experiences." Mindy E. Bergman, Lilia M. Cortina & Louise F. Fitzgerald, *The (Un)reasonableness of Reporting: Antecedents and Consequences of Reporting Sexual Harassment.*

87 J. Applied Psychol. 230, 230 (2002) (hereinafter "*The (Un)reasonableness of Reporting*"). In fact, the most infrequent response to harassment in all of these studies is to seek relief from one's employer. *See, e.g.*, Louise F. Fitzgerald et al., *Why Didn't She Just Report Him?: The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 J. Soc. Issues 117, 121 (1995) (hereinafter "*Why Didn't She Just Report Him?*"). And, among those sexual harassment targets who do turn to their employers for support, they most commonly use less formal mechanisms within the workplace. *Id.* Women least often respond to harassment by taking any kind of formal or legal action. *Id.*

Instead, researchers have identified a wide range of informal and individual coping strategies that women use to try to manage the events and their consequent emotional and psychological effects. Many women faced with harassment will "simply tolerat[e] the harassment, denying that it is happening or that it has any effect," *Job-Related and Psychological Effects of Sexual Harassment*, at 404. Others respond by ignoring the behavior or trying to manage it through indirect comments. Some interpret the conduct as "horseplay" or "playing around" in order to characterize it as something other than harassment. *Changed Women and Changed Organizations*, at 37-38. *See also The Paradox of Complaining*, at 1167-74 (describing how women try to "not take it personal" in order to avoid direct confrontation of sexual harassment). One of the most frequent responses from targets of harassment is simply to try to avoid the harasser.

See, e.g., Why Didn't She Just Report Him?, at 119-120. In fact, research consistently demonstrates "that women avoid their harassers at far greater rates than they confront." Vicki J. Magley, *Coping with Sexual Harassment: Reconceptualizing Women's Resistance*, 83 J. Personality & Soc. Psychol. 930, 943 (2002). *See also* Caroline Cochran, Patricia A. Frazier & Andrea M. Olson, *Predictors of Responses to Unwanted Sexual Attention*, 21 Psychol. Women Q. 207, 222-24 (1997) (study demonstrating that avoiding the harasser is one of the most typical responses to harassment).

While research into victim response consistently reveals these patterns, those who study reactions to sexual harassment also report that "[t]he question most commonly asked concerning victim response is, 'Why didn't she just report him?'" *Why Didn't She Just Report Him?*, at 122. The explanations that harassment targets offer for their decision not to take formal action against misconduct are varied: some believe that "nothing can or will be done and many are reluctant to cause problems for the harasser. The most common reason, however, is fear—fear of retaliation, of not being believed, or hurting one's career, or of being shamed and humiliated." *Id. See also Changed Women and Changed Organizations*, at 39.

Ultimately, women's assessments of whether to confront harassment directly and formally, or to use personal and individual coping mechanisms "rest on a careful balancing of the costs and benefits of doing so." Deborah A. Brake, *Retaliation*, 90 Minn. L. Rev. 18, 36 (2005) (hereinafter "*Retaliation*"). *See also*

Deborah E. Knapp, et al., *Determinants of Target Responses to Sexual Harassment: A Conceptual Framework*, 22 Acad. Mgmt. Rev. 687, 700 (1997) (hereinafter "*Determinants of Target Responses to Sexual Harassment*"). The pressures not to use formal mechanisms are considerable—the personal costs of doing so range from direct retaliation in the form of job loss to social stigma and loss of self-esteem. The benefits are often unclear, and are very dependent on the organizational climate within which the harassment victim is assessing her options.

A. Women Face—and Thus Reasonably Fear—Retaliation for Calling Attention to Harassment

Fear of retaliation is the most significant barrier to reporting sexual harassment on the job. Numerous studies report that women fear that complaining about harassment will make things worse for them at work, and, in fact, studies also show that this fear is well-founded. In many organizations, reporting harassment leads to retaliation. Vicky Crawford's story is a case in point.

In the social science literature, "[s]tudies of victims consistently report that fear of personal or organizational retaliation is the major constraint on assertive responding." *Why Didn't She Just Report Him?*, at 127. *See also* Cheryl R. Kaiser & Carol T. Miller, *Stop Complaining! The Social Costs of Making Attributions to Discrimination*, 27 Personality and Social Psychol. Bull. 254, 255 (2001) (hereinafter *"Stop Complaining!"*) ("The most

commonly documented barrier to confronting discrimination is interpersonal costs, such as being perceived as a troublemaker or experiencing retaliation.") Specifically, one study found that about 70 percent of sexual harassment victims who choose not to file claims of discrimination cite a fear of retaliation as a "moderate or strong influence on their decision." Ellen R. Pierce, Benson Rosen & Tammy Bunn Hiller, *Breaking the Silence: Creating User-Friendly Sexual Harassment Policies*, 10 Emp. Resps. & Rts. J. 225-233 tbl.II (1997). In a study done by the U.S. Merit Systems Protection Board, 29 percent of employees who had experienced incidents of sexual harassment did not report them because of fear that it would make circumstances at work more unpleasant and 17 percent did not report because they believed it would adversely affect their careers. *Sexual Harassment of Federal Employees: An Update.*

Other studies document that this fear of retaliation is well-founded. For example, in one study, 62 percent of state workers "reported retaliation for their responses to harassment, including lowered job evaluations, denial of promotion and being transferred or fired—and the most assertive responses often incurred the greatest costs." *Why Didn't She Just Report Him?*, at 122-123 (describing the study conducted in P.H. Loy & L.P. Stewart, *The Extent and Effects of Sexual Harassment of Working Women*, 17 Sociological Focus 31-43 (1984)). Another found that 41 percent of victims who file formal claims about on-the-job harassment report that the claim filing made things

worse at work. *Sexual Harassment of Federal Workers,* at 13-14.[4]

B. Social and Emotional Costs Further Pressure Victims and Witnesses to Remain Silent

Reporting harassment or addressing it through other formal or confrontational means presents risks short of retaliation but similarly destructive for women at work. Employees who speak out about discrimination face strong social stigma. Identifying oneself as a target of discrimination negatively affects self-esteem and tends to earn the target the label of complainer or troublemaker. Thus, some of the social science research actually suggests that "assertive coping responses at best have little substantive impact; at worst, they appear to increase damage to the target's job, psychological, and health status." *The (Un)reasonableness of Reporting,* at 230. *See also* Theresa M. Beiner, *Gender Myths v. Working Realities: Using Social Science to Reformulate Sexual Harassment Law* 164-65 (2005).

Studies reveal that individuals who complain about discrimination are perceived as troublemakers. *See, e.g.*, Cheryl R. Kaiser & Brenda Major, *A Social Psychological Perspective on Perceiving and*

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[4] The EEOC's most recent data on charge filings also show the frequency with which retaliation follows formal complaints of harassment and other discrimination. The number of retaliation charges has increased markedly in recent years, making up almost a third of the charges filed with the EEOC in 2007. *See* Equal Employment Opportunity Commission, http://www.eeoc.gov/stats/enforcement.html. These data bear out the concern that those who do come forward to challenge discrimination face retaliation.

Reporting Discrimination, 31 Law & Soc. Inquiry 801, 818-819 (2006). A claim of discrimination brings significant negative social consequences. In particular, one study found that when a person complained about discrimination, "[r]egardless of how much discrimination the stigmatized person faced, he was rated as more hypersensitive, emotional, argumentative, irritating, trouble making and complaining when he attributed his failure to discrimination." *Stop Complaining!*, at 261.

Faced with this type of response, it is not surprising that working women often show reluctance to confront sexist conduct directly. Several psychological studies have explored this phenomenon and have shown that women have a keen awareness of how personally and socially costly it could be to respond formally or openly to discrimination. See J. Nicole Shelton & Rebecca E. Stewart, *Confronting the Perpetrators of Prejudice: The Inhibitory Effects of Social Costs*, 28 Psychol. Women Q. 215 (2004) (study of how perceived social costs of reporting affect women's decisions about whether to report harassment); Julie A. Woodzicka & Marianne LaFrance, *Real Versus Imagined Gender Harassment*, 57 J. Soc. Issues 15, 20-21 (2001); *What Did you Just Say?!*, at 85-86 (reporting results of a study showing that women are constrained in their responses to sexist remarks by awareness of social pressures and costs).

The costs of identifying as a victim of sexual harassment are not only external. The research demonstrates that "stigmatized people are often unwilling to make discrimination attributions." *Stop*

Complaining!, at 254. *See also* Karen M. Ruggiero & Donald M. Taylor, *Why Minority Group Members Perceive or Do Not Perceive the Discrimination that Confronts Them: The Role of Self-Esteem and Perceived Control*, 72 J. Personality & Soc. Psychol. 373, 386 (1997). There are numerous explanations for this reluctance. Importantly, "[a]voiding attributions of discrimination enabled the subjects to preserve their socially oriented self-esteem and their feelings of control over their destiny." *Retaliation*, at 27. In fact, women will tend to explain away sexism, even when confronted with clear evidence that it has occurred. Elizabeth H. Dodd et al., *Respected or Rejected: Perceptions of Women Who Confront Sexist Remarks*, 45 Sex Roles 567, 568-69 (2001).

Vicky Crawford's experience illustrates the range of coping mechanisms women use to deal with sexual harassment in the workplace and the fear that often keeps them silent. Faced with repeated incidents of lewd sexual harassment by a high-level manager in her office, Ms. Crawford's first response was to ask him to stop. Although her efforts to handle the situation were unsuccessful, she nonetheless did not file her own report with Metro because she feared that she would face retaliation. Instead, like many women, she continued her efforts to manage the situation informally. When she was asked directly about Dr. Hughes' workplace conduct, she told the investigator about his harassment of her and of other women. After she reported her experience, she lost her job. If Ms. Crawford's story ends where the Sixth Circuit left it, it will serve as a powerful message to other sexual harassment victims that their fear of retaliation is warranted. Sexual harassment will

continue and women will continue to suffer the consequences, often in silence.

III. The Ruling Below Should be Reversed Because it Will Discourage Efforts to Eliminate Sexual Harassment

The Court's decision in this case will send a strong message to employers about how seriously they must take their legal obligation to end discrimination. In *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405, 2414 (2006), this Court emphasized the importance of "broad protection" from retaliation as integral to accomplishing the law's objectives. "Title VII depends for its enforcement upon the cooperation of employees who are willing to file complaints and act as witnesses." *Id.*. This case highlights the role that employers can play in either encouraging or significantly discouraging the cooperation of their employees in efforts to investigate and ultimately to eradicate discrimination.

A. An Organizational Climate That Encourages the Reporting of Sexual Harassment Is Essential

Organizational policies and organizational climate have a dramatic impact on the likelihood that women who face harassment will report it. Employers that do not tolerate harassment and that actively protect employees from retaliation for reporting misconduct will see a higher rate of reporting, and therefore will be more likely and more able to address discrimination when it occurs. *See,*

e.g. The (Un)reasonableness of Reporting, at 237-38. By contrast, employers that tolerate retaliation will see less reporting—but not less harassment. When women are fearful of reporting harassment because of possible retaliation, the harassment will go unchecked. Moreover, "[t]he relationship between discrimination and retaliation is reciprocal: just as tolerance for discrimination increases the likelihood of retaliation, retaliation also encourages further discrimination." *Retaliation*, at 41-42. The Sixth Circuit's decision permits precisely the type of employer culture least likely to eliminate harassment.

Both the nature of a woman's response to sexual harassment and the extent of harm caused by the harassment are significantly affected by the "responsiveness of other people and the organization for which she works." *Changed Women and Changed Organizations*, at 30. *See also Determinants of Target Responses to Sexual Harassment*, at 707-708. Thus, employer policies can have a direct impact on the extent and nature of the consequences for the target, including psychological, physical and professional outcomes. *The Antecedents and Consequences of Workplace Sexual Harassment*, at 133-34; *Why Didn't She Just Report Him?*, at 122 (controlling for severity of harassment, "organizational factors were the best predictors of response"). Because women's assessment of whether to report harassment depends on their evaluation of the likely consequences, an employer's policies can be structured either to encourage or to discourage women from reporting or serving as witnesses about sexual harassment.

Indeed, studies have concluded that "when an organization's responses to sexual harassment are efficacious, individuals may feel compelled to voice their concerns to a greater extent" through mechanisms such as reporting. Elissa L. Perry, Carol T. Kulik & James M. Schmidtke, *Blowing the Whistle: Determinants of Responses to Sexual Harassment*, 19 Basic & Applied Soc. Psychol. 457, 476-77 (1997).

In terms of organizational climate, researchers have identified three key predictors of whether women will report sexual harassment: "[P]erceived risk to victims for complaining, a lack of sanctions against offenders, and the perception that one's complaints will not be taken seriously." *The Antecedents and Consequences of Workplace Sexual Harassment*, at 133. These three factors correlate directly with whether an employer's complaint and investigation process is designed to encourage—and is actually perceived to encourage—reporting of illegal conduct. Ultimately, in an effective internal investigative system, reporting sexual harassment "should be viewed as an attempt to improve the organization and to contribute to the public good, not as a betrayal or something to be punished." R.J. Paul & J.B. Townsend, *Don't Kill the Messenger? Whistleblowing in America—A Review and Recommendation*, 9 Emp. Resp. & Rts. J. 149, 156 (1996).

The social science research consistently demonstrates that an effective organizational system for addressing sexual harassment must give targets and potential witnesses a clear sense that they need

not fear retaliation, that reports are treated fairly, and that reporting will not come at personal cost to the victim. *The (Un)reasonableness of Reporting*, at 232. Recognizing these facts, many guides to employer "best practices" build on the available social science research and caution that "[a]n otherwise well-conceived policy may be ineffective if it does not provide adequate safeguards against retaliation." American Bar Association, Commission on Women in the Profession, *Sex-Based Harassment: Workplace Policies for the Legal Profession*, at 26 (2d ed. 2007). Moreover, an investigative process for sexual harassment claims cannot succeed unless it protects everyone who provides information relevant to an investigation. *Id.* ("Individuals who are not themselves complainants but who assist in a sex-based harassment investigation should also be protected from retaliation under the policy.").

Vicky Crawford's experience demonstrates at least three fundamental elements of the sexual harassment reporting experience and the need for organizational responses that address them. The first, of course, is that victims of harassment are—like Ms. Crawford—likely to remain silent because of fear of retaliation for reporting. If these harassment targets also fear retaliation for answering questions in an employer investigation, they are likely to remain silent in those investigations as well.

A second common element of sexual harassment is that most instances of sexual harassment take place in private, so that an investigation is likely to lead to "he said/she said" evidence. Therefore, evidence that corroborates one side or the other is

crucial. Here, as described in the Brief for Petitioner, Metro ignored what should have been powerful corroborating evidence—testimony about being sexually harassed by Dr. Hughes from three different women. Because each woman was alone with Dr. Hughes when the harassment described occurred, none of their statements could be specifically corroborated by another witness, and Metro's final report on its investigation essentially accepted Dr. Hughes' denial that any of the harassment had occurred. However, the error of Metro's putting on blinders when it looked at the corroborating evidence (which it obtained by promising the women that they would not face retaliation) does not minimize the importance of such evidence and should not be compounded by allowing Metro to fire all of the witnesses.

A further way in which Ms. Crawford's story is typical is that targets of harassment by very senior or well-connected members of an organization are particularly reluctant to testify because of fears of retaliation. Here, Ms. Crawford recognized that Dr. Hughes was in a position to protect himself at the expense of others, and she therefore held her tongue, until asked directly, about his conduct.

These realities make especially important a reporting mechanism that safeguards witnesses—both any witness who might have information about the circumstances of a specific case and also those who can offer testimony about other misconduct by the harasser—who come forward. Investigative processes that encourage open discussion about related incidents by an alleged harasser are more

likely to uncover serious patterns of abuse. This is particularly true in light of evidence that women considering whether to report harassment are deterred by the concern that a supervisor will respond by saying that he has not heard the same kind of complaints from anyone else. Anna-Maria Marshall, *Consciousness in Context: Employees' Views of Sexual Harassment Grievance Procedures*, in Benjamin Fleury-Steiner & Laura Beth Nielsen, The New Civil Rights Research: A Constitutive Approach 101, 113 (2006).

The need for clear protection against retaliation is especially serious when the alleged harasser is a senior manager in an organization. Employees tend to believe that their employers' internal investigative processes will favor the "more important" employee. *Id.* at 110. Thus, reluctance to participate in an investigation, either as an original complainant or as a witness, becomes more likely when the person accused of harassment is higher up in the organization.

Considered in light of the available research, Vicky Crawford's experience with sexual harassment was in many ways quite typical. She, like the other women in her office and like so many other women in other workplaces, did not report the harassment directly. She was especially reluctant to do so because of Dr. Hughes' position in the organization. Eventually, though, rumors about Dr. Hughes' misconduct reached Metro's legal department and the department began asking questions. When given this direct opportunity to report the harassment she had faced, Ms. Crawford took what she knew was a

risk and told her story. In the course of her participation in this process, she expressed strong fears that she would be retaliated against. Immediately after she spoke up–participating in the internal investigation and opposing the harassment she and others had faced–Ms. Crawford was fired. The message her story will sends to other employees is that reporting sexual harassment and corroborating other women's complaints about an abusive employer are not safe choices. The message the Sixth Circuit's decision sends to employers is that a system of internal investigation of sexual harassment does not have to include any protection for women who participate, and consequently does not really have to be designed to encourage reporting of misconduct. That message is contrary to Title VII's "central statutory purpose[e] of eradicating discrimination throughout the economy," *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417-18 (1975), *see also Burlington Industries, Inc. v. Ellerth*, 524 U.S. at 764. It should not be condoned by this Court.

B. The Law Should Be Consistent in Encouraging the Reporting and Eradication of Sexual Harassment

The Sixth Circuit's rule is particularly troubling when considered in the context of the employer liability standards in harassment claims challenging hostile work environments created by supervisors.

This Court has given employers an affirmative defense to liability for hostile work environment harassment if they can show that they "exercised reasonable care to prevent and correct promptly any

sexually harassing behavior" and that the plaintiff "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807. This affirmative defense effectively requires employers to establish internal processes for investigating and addressing allegations of sexual harassment and employees to utilize those processes. The defense is intended to further Title VII's purpose of eradicating discrimination without resort to litigation. As the Court has said, "Title VII is designed to encourage the creation of antiharassment policies and effective grievance mechanisms." *Ellerth*, 524 U.S. at 764.

Where the legal rules outlined by this Court so explicitly promote the creation of internal organizational structures to root out and resolve sexual harassment, the Court should ensure that those structures will in fact serve their purpose. The data on organizational climate and its impact on reporting confirm the common-sense proposition that

> courts should require that the organization demonstrate a climate intolerant of sexual harassment through a documented history of taking complaints seriously, protecting complainants from retaliation and holding perpetrators responsible for their actions. Only in such an organizational context would it be reasonable for victims to avail themselves of grievance mechanisms.

The (Un)reasonableness of Reporting, at 241.

The Sixth Circuit's decision is fundamentally inconsistent with the goals of internal investigation and resolution articulated by this Court. Without protections for those who come forward when "invited" to do so by an employer, the employer's investigation may be no more than a cynical exercise—using the cover of an investigation into suspected sexual harassment as a mechanism to identify and root out potential "troublemaker" witnesses. By denying protection against retaliation to employees who honestly and fully answer questions about workplace misconduct in an employer investigation, the decision diminishes significantly the likelihood that such an investigation will be effective. Employees who are called into an investigation will fear the consequences if they give the "wrong" answer. Employees who might otherwise have complained themselves will worry that possible corroborating witnesses will be chilled from answering their employer's questions. These silencing effects will be particularly potent in the case of sexual harassment, where research demonstrates that a host of internal and external mechanisms already pressure targets of that harassment to maintain their silence.

The costs of such silence cannot be overstated. For victims of harassment, the costs of silence are economic, physical and psychological. For organizations, the price of this silence comes in lost collaboration within the organization, decline in group and individual productivity, financial losses caused by absenteeism and poor retention. And for

society, the price of this silence is the continued prevalence of sexual harassment that remains unreported and unaddressed.

CONCLUSION

This Court should reverse the Sixth Circuit and recognize that Title VII's protection against retaliation includes employees who participate in internal investigations of misconduct and thereby oppose that misconduct.

Respectfully submitted,

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APPENDIX

APPENDIX

INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

AARP is a nonpartisan, nonprofit membership organization of people age 50 or older dedicated to addressing the needs and interests of older Americans. AARP supports the rights of older workers and strives to preserve the legal means to enforce them. Approximately half of AARP's almost 40 million members are in the work force and are protected by the Title VII, the Age Discrimination in Employment Act (ADEA), and other employment laws. Vigorous enforcement of these and other work place civil rights laws is of paramount importance to AARP, its working members, and the millions of other workers of all ages who rely on them to deter and remedy illegal employment discrimination.

For 125 years, the *American Association of University Women* (AAUW), an organization of over 100,000 members, has been a catalyst for the advancement of women and their transformations of American society. AAUW members belong to a community that breaks through educational and economic barriers so all women have a fair chance. With more than 1,000 branches across the country, AAUW members work to promote education and equity for all women and girls through education, research, and advocacy. AAUW mobilizes advocates nationwide on priority issues, and chief among them is women's economic security and equal opportunity in the workplace. AAUW supports workplace fairness programs and civil rights laws that promote

and enforce equal employment opportunities for women, especially those that diminish sexual harassment, promote pay equity, break the glass ceiling, and provide family friendly workplaces.

The *American Civil Liberties Union* (ACLU) is a nationwide, nonprofit, nonpartisan organization of more than 550,000 members, dedicated to preserving the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. In support of those principles, the ACLU has appeared before this Court on numerous occasions, both as direct counsel and as *amicus curiae*. Through its Women's Rights Project, founded in 1972, the ACLU has long sought to ensure that the law provides individuals with meaningful protection from employment discrimination on the basis of gender, including sexual harassment in the workplace. The ACLU Women's Rights Project has also urged robust legal protection for victims of sexual harassment who bring that harassment to light. The proper resolution of this case, which concerns retaliation against a harassment victim who spoke up and cooperated with her employer's investigation, therefore is a matter of substantial interest to the ACLU and its members.

The *Association for Women in Science* (AWIS) is the premier advocate organization for women in science, technology, engineering and mathematics (STEM). Founded in 1971, AWIS has consistently been in the forefront of building pathways to advancement, better work environments, and positive educational experiences for women in STEM. AWIS supports the vigorous enforcement of

all civil rights laws pertaining to workforce protection. AWIS is headquartered in Washington, D.C. with chapters throughout the United States.

The *California Women's Law Center* (CWLC) is a private, nonprofit public interest law center specializing in the civil rights of women and girls. The California Women's Law Center, established in 1989, works in the following priority areas: Sex Discrimination, Women's Health, Race and Gender, Women's Economic Security, Exploitation of Women and Violence Against Women. Since its inception, CWLC has placed a strong emphasis on eradicating sex discrimination in employment. CWLC has authored numerous amicus briefs, articles, and legal education materials on this issue. This case raises questions within the expertise and concern of the California Women's Law Center. Therefore, the California Women's Law Center has the requisite interest and expertise to join in the amicus brief in this matter.

The *Coalition of Labor Union Women* (CLUW) is an AFL-CIO affiliate with over 20,000 members, a majority of whom are women. Since 1974, CLUW has advocated to strengthen the role and impact of women in every aspect of their lives. CLUW focuses on key public policy issues such as equality in educational and employment opportunities, affirmative action, pay equity, national health care, labor law reform, family and medical leave, reproductive freedom and increased participation of women in unions and in politics. Through its more than 80 chapters across the United States,

CLUW members work to end discriminatory laws, and policies and practices adversely affecting women through a broad range of educational, political and advocacy activities. CLUW has frequently participated as *amicus curiae* in numerous legal cases involving issues of gender discrimination and pay equity. CLUW provides training and educational support to its members on issues relating to Title VII enforcement and prevention of workplace harassment and discrimination. Over the years, CLUW members have reported substantial difficulties in obtaining effective relief for harassment and other discriminatory workplace situations. The overly narrow view of retaliation adopted by the court below will likely further discourage employees from seeking redress for harassment to the detriment of all workers.

The *Connecticut Women's Education and Legal Fund* (CWEALF) is a non-profit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF defends the rights of individuals in the courts, educational institutions, workplaces and in their private lives. Since its founding in 1973, CWEALF has provided legal information and conducted public policy and advocacy to ensure women have equal employment opportunities and are free from workplace discrimination.

Dads & Daughters is the only national organization dedicated specifically to maximizing the

power and potential of father-daughter relationships. Dads & Daughters represents fathers and stepfathers across the United States who are committed to the future of their daughters and committed to making the world safe and fair for all daughters, no matter what their age. Harassment and discrimination in the workplace are direct threats to the safety of our daughters and are patently unjust for our daughters and our sons. For these reasons, we have an interest in supporting Title VII and the *amicus curiae* brief in *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee.*

Equal Rights Advocates (ERA) is a San Francisco-based women's rights organization whose mission is to secure and protect equal rights and economic opportunities for women and girl through litigation and advocacy. Founded in 1974, ERA has litigated historically important gender-based discrimination cases, including *Geduldig v.* Aiello, 417 U.S. 484 (1974), *Richmond Unified School District v.* Berg, 434 U.S. 158 (1977), and *Pallas v. Pacific Bell*, 940 F.2d 1324 (9th Cir. 1991), and is co-counsel in the current sex discrimination case of *Dukes v. Wal-Mart Stores*, in the United States District Court, Northern District of California. ERA has appeared as amicus curiae in numerous Supreme Court cases involving the interpretation of Title VII including *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Faragher v. Boca Raton*, 522 U.S. 1105 (1998); and *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998). ERA has represented plaintiffs in numerous sexual harassment cases, including the first case in

the Ninth Circuit to find sexual harassment a violation of Title VII, *Miller v. Bank of America*, 600 F.2d 211 (9th Cir. 1979). In addition, ERA sponsors public policy initiatives, counsels hundreds of individual women each year on their legal right to be free from sexual harassment, and conducts sexual harassment workshops for schools and non-profit organizations.

The *Feminist Majority Foundation* (the Foundation), is a non-profit organization with offices in Arlington, VA and Los Angeles, CA. The Foundation is dedicated to eliminating sex discrimination and to the promotion of women's equality and empowerment. The Foundation's programs focus on advancing the legal, social, economic, and political equality of women with men, countering the backlash to women's advancement, and recruiting and training young feminists to encourage future leadership for the feminist movement. To carry out these aims, the Foundation engages in research and public policy development, public education programs, litigation, grassroots organizing efforts, and leadership training programs.

The *Institute for Women's Policy Research* (IWPR) is an independent, non-profit, research organization that conducts rigorous research and disseminates its findings to address the needs of women, promote public dialogue, and strengthen families, communities, and societies. The Institute works with policymakers, scholars, and public interest groups around the country to design, execute, and disseminate research that illuminates economic and

social policy issues affecting women and families, and to build a network of individuals and organizations that conduct and use women-oriented policy research. A primary focus of IWPR's research efforts is women's employment and earnings and the laws that protect a workplace free of discrimination.

Legal Momentum advances the rights of women and girls by using the power of the law and creating innovative public policy. Assuring women's equality in the workplace is central to Legal Momentum's mission. Legal Momentum has litigated eases to secure full enforcement of laws prohibiting sex discrimination, including *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and has participated as *amicus curiae* on leading cases in this area, including *Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006), Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), and *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993). Because sexual harassment is so pervasive yet so often unreported, Legal Momentum is committed to securing broad protection from retaliation for women who experience and seek redress for sexual harassment.

Myra Sadker Foundation is a non-profit organization dedicated to promoting equity in and beyond schools. Myra Sadker, educator, author, and Dean at American University, exposed both the subtle and blatant education biases that limit the academic, psychological, economic, and physical

potential of both males and females. The foundation supports research, training and special programs to assist teachers, parents, children and other adults in eliminating such biases from America's schools.

Founded in. 1996, the *National Asian Pacific American Women's Forum* (NAPAWF) is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American women and girls. The economic empowerment of all women is one of the central issues that forms the basis of NAPAWF's advocacy. NAPAWF supports the petitioner in this case because the persistence of sexual harassment prevents women from achieving equality and economic security in the workplace.

Established in 1955, the *National Association of Social Workers* (NASW) is the largest association of professional social workers in the world with 145,000 members and chapters throughout the United States, in Puerto Rico, Guam, the Virgin Islands, and an International Chapter in Europe. With the purpose of developing and disseminating standards of social work practice while strengthening and unifying the social work profession as a whole, NASW provides continuing education, enforces the *NASW Code of Ethics*, conducts research, publishes books and studies, promulgates professional criteria, and develops policy statements on issues of importance to the social work profession. NASW recognizes that discrimination and prejudice directed against any group are not only damaging to the social, emotional, and economic well-being of the affected group's

members, but also to society in general. NASW has long been committed to working toward the elimination of all forms of discrimination against women.

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that the organization endorses and resolves to work for "the enactment and enforcement of laws and regulations that protect civil rights and individual liberties for all." Consistent with our Principles and Resolutions, NCJW joins this brief.

The *National Council of Women's Organizations* is a coalition of over 200 of the nation's largest and most influential women's groups. Representing 10 million women nationwide, NCWO groups support full enforcement of laws that prohibit sex discrimination in employment. NCWO groups recognize the long-term effects that sexual harassment has on women's economic security as well as the difficulties women face in complaining about such harassment.

The *National Education Association* (NEA) is a nationwide employee organization with more than 3.2 million members, the vast majority of whom are employed by public school districts, colleges, and universities. NEA is strongly committed to opposing employment discrimination, including

retaliation for complaining about sexual harassment, and firmly supports the vigorous enforcement of Title VII.

The National Organization for Women Foundation (NOW) is a 501(c)(3) organization devoted to furthering women's rights through education, litigation, and advocacy. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with over 500,000 contributing members in all 50 states and the District of Columbia. Since its inception in 1986, NOW Foundation's goals have included equality and fair treatment for women. We have a strong interest in the prevention of sexual harassment in the workplace, and in the protection of those who report such misconduct, whether within or outside of a legal proceeding. Properly applying and enforcing Title VII, and assuring the fair and equal treatment of women in the judicial system, are both interests of the NOW Foundation.

The *National Partnership for Women & Families* is a nonprofit, national advocacy organization founded in 1971 that promotes equal opportunity for women, quality health care, and policies that help women and men meet both work and family responsibilities. The National Partnership has devoted significant resources to combating sex, race, and other forms of invidious workplace discrimination, and has filed numerous briefs *amicus curiae* in the U.S. Supreme Court and in the federal circuit courts of appeal to advance the opportunities of women and people of color in employment.

The *Northwest Women's Law Center* (NWWLC) is a regional non-profit public interest organization that works to advance the rights of all women in Washington, Alaska, Montana, Idaho and Oregon, through litigation, legislation, education and the provision of legal information and referral services. Since its founding in 1978, NWWLC has been dedicated to protecting and ensuring women's legal rights, including the right to equality in the workplace. Toward that end, NWWLC has participated as counsel and as *amicus curiae* in cases involving sexual harassment and other forms of gender discrimination throughout the Northwest and the country.

The *Older Women's League* (OWL) is a non-profit, non-partisan organization that accomplishes its work through research, education, and advocacy activities conducted through its chapter network. Now in its 28th year, OWL provides a strong and effective voice for the more than 70 million women age 40 and over in America. OWL has long advocated for equality and economic security, therefore we believe that all persons should be free from sexual harassment in the workplace.

People For the American Way Foundation (PFAWF) is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, PFAWF now has hundreds of thousands of

members nationwide. PFAWF has been actively involved in litigation and other efforts to combat discrimination, and is particularly concerned that our nation's anti-discrimination laws be properly interpreted and vigorously enforced. PFAWF joins this brief because the Sixth Circuit's ruling, if not reversed, would seriously undermine the rights of all Americans to a workplace free of unlawful discrimination.

Pick Up the Pace is a San Francisco-based non-profit organization whose mission is to identify and eliminate barriers to women's advancement in the workplace, emphasizing the role of law in combating glass ceiling discrimination, cognitive bias, gender stereotyping and work/family conflict. Established in 2005, the organization seeks to raise awareness of cutting edge gender bias issues in the workplace through public education and legal advocacy, most recently as *amicus curiae* before the United States Supreme Court in *Burlington Northern & Santa Fe Railway Co. v. Sheila White, BCI Coca-Cola Bottling Co. v. EEOC,* and *Ledbetter v. Goodyear Tire & Rubber Company, Inc.*

The *Service Employees International Union*, CLC, CTW (SEIU), is an international union with 1.9 million members in the United States, Canada and Puerto Rico. As more than a majority of its members are women, SEIU has been a vigorous advocate for the rights of women and has fought to protect women from sexual harassment in the workplace.

The *Southwest Women's Law Center* is a nonprofit women's legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center is committed to eliminating gender discrimination in all of its forms and ensuring broad and meaningful enforcement of anti-discrimination laws in the workplace.

The *Union for Reform Judaism* (URJ), founded in 1873, is the central body of the Reform Movement in North America including 900 congregations encompassing 1.5 million Reform Jews. The URJ comes to this issue out of our longtime commitment to asserting the principle, and furthering the practice, of the full equality of women on every level of life. We oppose discrimination against all individuals, and recognize that the insidious nature of sexual harassment may cause irreparable damage. We have developed programs that raise consciousness among men and women of the realities of sexual harassment and its impact, advocated for laws that serve to end such harassment, encouraged the creation of robust corporate policies to prevent harassment, and supported providing victims with avenues for redress.

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair

employment practices, helps increase access to training and education, and provides women with information and tools to plan their careers. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed strongly believes that sexual harassment is one of the main barriers to achieving equal opportunity and economic equity for women in the workplace, and that being retaliated against for complaining about it is like being victimized a second time.

The *Women's Bar Association of the District of Columbia* (WBA-DC), founded in 1917, works to advance and protect the interests of women lawyers; to maintain the honor and integrity of the legal profession, and to promote the administration of justice. Among its many activities, WBA-DC develops and promotes the interests of women by monitoring legislation and filing amicus briefs on issues vital to women. WBA-DC has an interest in protecting the legal rights of women, both within and outside of the legal profession, as guaranteed by Equal Protection Clause of the U.S. Constitution and by Title VII of the Civil Rights Act of 1964. The organization is particularly interested in protecting the rights of women to work in an environment free from sexual harassment and to be able to enforce laws prohibiting sexual harassment in the workplace. Therefore, WBA-DC files as an amicus in this matter in the interest of protecting the rights of women to equality in the workplace.

The *Women's Law Center of Maryland,* Inc. is a nonprofit, membership organization with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law and family law. Through its direct services and advocacy, the Women's Law Center seeks to protect women from discrimination and harassment in the workplace.

The *Women's Law Project* (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Throughout its history, the WLP has worked to eliminate sex discrimination, bringing and supporting litigation challenging discriminatory practices prohibited by federal civil rights laws. The WLP has a strong interest in the proper application of civil rights laws to provide appropriate and necessary redress to individuals victimized by discrimination.